IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 137/2002

Badri Singh & Others …….Defendants/Appellants

Versus

Rajendra Prasad Kandwal ….Plaintiff/Respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date: September 30, 2004

The present appeal has been field under Order 43 Rule 1 (r) Code of Civil Procedure (C.P.C.) against the order-dated 05.06.2002 passed by learned the Civil Judge, Senior Division, Dehradun in Original Suit No.432/2002 on the application 8-C/2 moved by the Plaintiff/Respondent on the grounds that no ex-parte injunction should have been granted without recording the mandatory findings on the point of prima facie case, balance of convenience and irreparable loss, as there was no urgency to issue ex-parte injunction.

The learned Civil Judge (Senior Division) by the impugned order, issued ex-parte injunction under Order 39 Rule- 1&2 of the Code of Civil Procedure and issued the notices to the Opposite Parties after perusing the Paper No.11-C in which the father of the plaintiff Shri Brij Mohan was a recorded member of Veerbhadra Samuhik Krishak Sahkari Samiti Bapugram, Rishikesh, District Dehradun and the land in dispute was recorded in his name and Paper No.13 © and 14 © were given as receipts.

The Learned Civil Judge (Senior Division) found prima-facie case on the basis of the documents filed by plaintiff/respondent and

issued notices to the respondents and fixed July 02, 2002 for the objection and disposal of ad-interim injunction application Order 39 Rule 1 & 2 C.P.C. and only till then restrained the defendants not to interfere with the peaceful possession of the plaintiff and not to enter after breaking the fencing.

This Court on July 08, 2002, passed the following order:-

"In the meanwhile status quo in respect of the possession as on this date shall be maintained".

The appeal is finally disposed of with the direction that if the application under Order 39, Rule 1 & 2 C.P.C. has not been decided by the Civil Judge (Senior Division), Dehradun, the same may be decided within on month from the date of receipt of the certified copy of this order after hearing the parties.

Interim order, dted July 08, 2002, shall remain operative till the disposal of the application.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang